

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA K. WOODMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Salt Lake City, UT

*Docket No. 99-308; Submitted on the Record;  
Issued November 12, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing either an emotional condition or a cervical condition that is causally related to factors of her federal employment; (2) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective February 14, 1997; and (3) whether the Office's denial of appellant's request for reconsideration pursuant to section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On May 21, 1991 appellant, then a 38-year-old distribution clerk, filed an occupational disease claim alleging repetitive stress injuries in her neck, left hand and the left side of her back that were causally related to factors of her federal employment.<sup>1</sup> By decision dated December 13, 1991, the Office accepted appellant's claim for thoracic outlet syndrome and left carpal tunnel syndrome. On February 4, 1992 appellant underwent left carpal tunnel release surgery. She received appropriate compensation for temporary total disability and returned to limited-duty work on February 25, 1992. In November 1992 the employing establishment began efforts to find a permanent limited-duty position for appellant.

By letter decision dated September 4, 1992, the Office formally denied appellant's request for leave buy back for the period November 22 to 23, 1991. In a decision dated October 4, 1993, appellant received a schedule award for a 10 percent permanent impairment of her left upper extremity for the period August 23, 1993 to March 29, 1994 for a total of 31.2 weeks of compensation.

In a letter dated October 19, 1995, the Office notified appellant that it had reopened her April 13, 1994 claim for a neck injury and advised her that a second opinion evaluation and report was necessary to provide a comprehensive and rationalized medical opinion.<sup>2</sup> After

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<sup>1</sup> In September 1989 appellant filed an occupational disease claim that was accepted for left shoulder sprain.

<sup>2</sup> A review of the record indicates that appellant filed a claim for injury to her neck on or about April 13, 1994.

further development of the evidence, on November 18, 1996, the employing establishment offered appellant a permanent position performing quality control duties with restrictions consistent with the limitations prescribed by her treating physician Dr. George Veasey, a Board-certified orthopedic surgeon, and consistent with the report of the Office referral physician, Dr. Arthur F. Meade, a Board-certified orthopedic surgeon. In a letter dated December 20, 1996, the Office informed appellant that it found the offered position suitable and within her physical capabilities. The Office advised appellant of the penalty provision set forth in 5 U.S.C. § 8106(c) of the Act and allowed appellant 30 days to provide an explanation if she refused the offer. By letter dated January 28, 1997, the Office responded to concerns raised by appellant in her letter dated January 17, 1997 and advised appellant that she had an additional 15 days to either refuse or accept the job offer. However, in the event she refused the job offer, her compensation benefits would be terminated. Appellant did not accept the offered position.<sup>3</sup>

In a decision dated February 14, 1997, the Office denied appellant's claim for cervical and emotional conditions on the grounds that the medical evidence did not establish that the claimed conditions were causally related to factors of her federal employment or to her accepted employment injuries. In a second decision dated February 14, 1997, the Office terminated appellant's compensation on the grounds that she refused an offer of suitable work. In a decision dated February 19, 1998 and finalized February 24, 1998, an Office hearing representative affirmed the February 14, 1997 decisions of the Office. By decision dated July 14, 1998, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to reopen the record for merit review.

The Board has carefully reviewed the entire case record on appeal and finds that appellant did not establish that she sustained either an emotional or a cervical condition that was causally related to factors of her federal employment or her accepted employment injuries.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>4</sup> The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>5</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>6</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>7</sup> neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally

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<sup>3</sup> By letter dated February 14, 1997, the employing establishment advised appellant that she would be removed from her position effective March 21, 1997 due to continued absence without leave.

<sup>4</sup> *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>5</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>6</sup> *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>7</sup> *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

related to federal employment and such a relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>8</sup>

In the present case, appellant submitted several reports in which the physicians diagnosed either cervical conditions or depression and generalized anxiety. However, none of these reports address whether there is a causal relationship between the diagnosed conditions and factors of her federal employment. Specifically appellant submitted a number of reports by Robert D. Card, Ph.D., a psychologist, who indicated that appellant suffered from extreme stress reaction and suggested that appellant not return to work. However, the record does not contain any documentation to establish whether or not Dr. Card is a clinical psychologist and, therefore, he is not considered to be a physician within the meaning of the Act.<sup>9</sup> In any case, while Dr. Card reported that appellant's stress reaction was related to the employing establishment, his opinion is not rationalized inasmuch as he did not address what specific factors may have caused her emotional condition. Appellant also submitted a report by Dr. Jeffrey A. Ayers, an osteopath, who noted that appellant's disability might not be only physical but also emotional and diagnosed major depression and generalized anxiety disorder without further explanation. As he did not adequately explain his medical conclusion or support it with objective or physical evidence, this report is not sufficient to establish that appellant sustained an emotional condition that was causally related to factors of her federal employment. Appellant has not met her burden of proof in this regard.

Appellant also submitted various medical reports in which the physicians diagnosed cervical conditions. Dr. Kathleen Tucker, an internist, diagnosed cervical strain with mild spasms. Dr. Meade found low grade degenerative disc disease at the C4 to C6 levels with spondylolytic degenerative changes and this finding was supported by radiographic evidence. However, as the physicians do not indicate that the cervical conditions are causally related to factors of appellant's federal employment, none of these reports are sufficient to establish a causal nexus between the diagnosed cervical conditions and appellant's federal employment. Thus, appellant has not established either an emotional or cervical condition that was causally related to factors of her federal employment.

The Board further finds that the Office properly terminated appellant's compensation effective February 14, 1997 on the grounds that she refused an offer of suitable work.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. This burden of proof is applicable if the Office terminates compensation pursuant to section 8106(c) for refusal to accept suitable work. The Office met its burden in this case.<sup>10</sup> Section 8106(c)(2) of the Act provides in pertinent part, "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered

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<sup>8</sup> See *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

<sup>9</sup> 5 U.S.C. § 8101(2).

<sup>10</sup> *Arthur C. Reck*, 47 ECAB 339 (1995).

... is not entitled to compensation.”<sup>11</sup> However, to justify such termination, the Office must show that the work offered is suitable.<sup>12</sup> An employee who refuses or neglects to work after suitable work has been offered to him or her has the burden of showing that such refusal of work was justified.<sup>13</sup>

The initial issue to be resolved is whether the position offered was suitable within the meaning of the Act and its regulations. The regulations governing the Act provide several steps that must be followed prior to the determination that the position offered is suitable. In this case, the Office properly requested information from appellant’s treating physician concerning whether the position offered November 18, 1996 was within appellant’s physical capabilities. Dr. Veasey approved the job offer on November 26, 1996 and noted that appellant could not do any patch up work or ladder climbing. The Office then confirmed that the position did not violate either of these restrictions. The employing establishment noted that the patch up work duties had been removed from the position description on August 15, 1996 after appellant advised them of the restriction with her last attempt to return to work. As the position was approved by appellant’s treating physician and is consistent with the restrictions he imposed, the Office properly determined that the position offered was suitable. The Board also finds that the Office properly informed appellant of the consequences of refusing the suitable work position.<sup>14</sup> The Office has met its burden of proof in terminating appellant’s effective February 14, 1997 pursuant to section 8106(c) of the Act.

The Board also finds that the Office’s refusal to reopen the case record does not constitute an abuse of discretion.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>15</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>16</sup> Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.<sup>17</sup>

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<sup>11</sup> 5 U.S.C. § 8106(c)(2).

<sup>12</sup> *David P. Comacho*, 40 ECAB 267 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341 (1981).

<sup>13</sup> 20 C.F.R. § 10.124; *see Catherine G. Hammond*, 41 ECAB 375 (1990).

<sup>14</sup> *Arthur C. Reck*, *supra* note 10.

<sup>15</sup> 20 C.F.R. § 10.138(b)(2).

<sup>16</sup> *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

<sup>17</sup> *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

With her request for reconsideration appellant submitted a narrative statement and medical evidence which had previously been considered by the Office. In her narrative statement, appellant addresses events and job offers that were made by the employing establishment prior to the November 1996 offer which was found suitable by the Office. These events and incidents are not relevant to the issue of whether the November 1996 job offer was suitable. Consequently, appellant has not raised any legal arguments which were not previously considered by the Office or established that it erroneously interpreted a point of law. Similarly, as the medical evidence submitted was repetitive or duplicative of evidence already in the case record, it has no evidentiary value and does not constitute a basis for reopening the case record. The Office properly denied appellant's request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated July 14 and February 24, 1998 are hereby affirmed.

Dated, Washington, D.C.  
November 12, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member